

**STATEMENT OF MR. MICHAEL BARRERA,
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BEFORE THE
HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATORY REFORM AND OVERSIGHT

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss “Federal Agency Treatment of Small Business,” how federal agencies comply with laws designed to ensure small business regulatory enforcement fairness.

Today, President George W. Bush, Administrator Hector Barreto, and I, as the National Ombudsman, all share your concern on the federal regulatory impact on America’s small businesses. The Office of the National Ombudsman (ONO), along with the Office of Advocacy and with the full support of this Administration, is working diligently with small businesses, trade associations, Federal agencies and our partners in Congress to promote and ensure a more small business friendly regulatory environment. A fair and common sense approach to regulatory enforcement helps save small businesses their valuable resources such as time, money, and jobs, thereby improving the economy overall. The ONO plays a critical part in this process by evaluating how federal agencies treat small businesses during regulatory enforcement or compliance actions.

Decreasing the number of excessive and arbitrary enforcement actions by Federal regulatory agencies while increasing compliance assistance activities are primary objectives for ONO. While the law requires ONO to be a neutral party, ONO still seeks to ensure that high-level federal agency officials hear and address complaints and concerns made by small entities. In other words, ONO seeks to act as a “troubleshooter” for small business. ONO is given this authority through the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which directs ONO to:

- work with each federal agency having regulatory authority over small businesses to ensure that the latter have a means to comment when they receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by agency personnel;
- establish a means to receive comments from small businesses regarding actions by agency employees conducting compliance or enforcement activities, and a way to submit these comments confidentially, if requested, to the affected agency;
- report annually to Congress evaluating agencies’ enforcement activities and rating their responsiveness to small business; and
- coordinate the activities of ten regional Regulatory Fairness (RegFair) Boards.

ONO relies on the efforts of the ten regional RegFair Boards across the U.S. to conduct outreach to small businesses in their regions to receive comments and educate small businesses about the services of ONO. Additionally, ONO, along with the RegFair Boards, conducts public hearings and receives small business comments regarding federal regulatory enforcement actions.

ONO also holds roundtables with trade associations to educate them and their members about ONO and its services. In conjunction with hearings and roundtables in each city ONO host Emerging Markets meetings, with group leaders which focus on women, minorities, and veterans, to inform under-served small business communities about the services offered by the ONO and the Small Business Administration (SBA).

One concern I often hear from small businesses throughout the country is that regulations are confusing and difficult to navigate. Small businesses want to comply with the law, but they need help knowing when a regulation will affect them and how to comply with it. In many cases, small businesses “don’t know what they don’t know”. As such, federal agencies cannot rely merely on posting a new regulation in the *Federal Register* and developing a brochure in order to educate small businesses about regulations. Federal agencies must provide assistance that is both easy to read and easy to understand. Additionally, small businesses need to know that assistance is available and accessible.

As public awareness of ONO grows, cooperation among the small business community and Federal regulatory agencies is growing and producing strong, positive relationships that produce results.

For example: The Internal Revenue Service (IRS) was once feared by small businesses which envisioned fines and penalties whenever the “tax man” was coming. Today, the IRS has taken a more proactive and responsive approach to the interests and concerns of small business. The IRS, through its Taxpayer Advocate system, now attends every RegFair Hearing and Roundtable conducted by ONO. In some cases, the small business owner testifying and attending the Roundtable or Hearing, and the IRS representative leave the room, address the problem and return to report that they have solved the problem **on the spot**.

Then there is the small shipping company from Baltimore, Maryland which had its fine refunded by U.S. Customs. Customs had fined the shipping company for failing to notify it in a timely manner of the presence of un-entered merchandise. The owner, Mr. Robert Herb, paid the fine, but appealed, contending that small shipping agencies should not be responsible for the following and tracking cargo after discharging from a vessel. After discovering ONO on the Internet, he contacted us for assistance. ONO replied within a day. Mr. Herb subsequently heard from the Director of U.S. Customs, who informed him that the agency had reviewed the case and reconsidered its previous decision, noting that “This issue appears to be more a case of miscommunication between Customs and Terminal Shipping as opposed to noncompliance with the regulations.) Mr. Herb then

received a refund of the fine money. He told us, “It was undoubtedly the most pleasant surprise of the year.”

Another example comes from a hearing I chaired in Indianapolis, Indiana. The owner of Mickey Finn’s Restaurant in Libertyville, Illinois testified that the Department of Labor (DOL) Wage and Hour Division field investigator appeared at his business one day and informed him that he could not claim an exemption from Fair Labor Standards Act (FLSA) minimum wage and overtime provisions for his brewmaster and his assistant. The owner, after spending \$7,000.00 in legal fees to contest this ruling, filed a comment with my office, and we went to DOL with the comment for review. Within 30 days, the DOL and this small business reached a mutually agreeable resolution at no additional cost to this small business.

During the past year, federal agencies have demonstrated a growing commitment to working with ONO and small businesses to improve the regulatory enforcement and compliance environment. Federal agencies have begun to think outside the box as they are making use of the internet, including SBA’s BusinessLaw.com website with its Business One Stop Compliance portal; increasing and improving outreach; conducting training seminars; and working more closely with trade associations. Many agencies consistently attend ONO’s hearings, particularly the DOL and IRS, which have attended each hearing and roundtable, not only to hear small business concerns but also to use these hearings as vehicles to educate small business about available compliance assistance.

Small businesses also received a helping hand with the enactment of the Small Business Paperwork Relief Act of 2002 (SBPRA). ONO is working with Office Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA) to assist federal agencies in complying with the SBPRA. Specifically, ONO and OMB have requested that federal agencies designate a small business point of contact within the agency for compliance assistance, provide a listing of their compliance assistance activities and submit a general summary of their compliance assistance program.

The SBPRA will also hold agencies accountable, as they must report on the number of enforcement actions taken against small businesses in which a civil penalty was assessed, the number of actions in which penalties were reduced or waived, and total monetary amount of the reductions or waivers. The first report is due at the end of this calendar year.

While we are seeing improvement, challenges still exist. Many small business owners are still hesitant to tell ONO about the treatment they received by a federal agency due to their concerns of federal retaliation. In order to address this fear, whether real or perceived, ONO has now started rating agencies on whether they have small business non-retaliation policies. Several agencies have been proactive and adopted written non-retaliation policies including USDA, IRS, U.S. Department of Interior, Federal Deposit Insurance Corporation (FDIC), Occupational Safety and Health Administration (OSHA), SBA, U.S. Securities and Exchange Commission (SEC),

Customs, National Credit Union Administration (NCUA), Food and Drug Administration (FDA), Federal Trade Commission (FTC), Federal Communications Commission (FCC) and Equal Employment Opportunity Commission (EEOC). ONO would like to see more agencies adopt formal written non-retaliation policies in order to demonstrate to small businesses that their government will hear from them without fear of reprisal.

As stated by President Bush: “The role of Government is to create an environment that encourages risk taking, an environment that facilitates the flow of capital and an environment in which people can realize their dreams.” By removing the “strangulation of regulation,” federal agencies can help America’s entrepreneurs turn their dreams into successes.

It is the mission of ONO to encourage federal agencies to adopt a “help you” attitude instead of a “gotcha” attitude, creating a more small business friendly federal regulatory enforcement environment. I am grateful for the opportunity to testify this morning on behalf of SBA. I will be happy to answer any questions for you or the other Subcommittee Members.